

MEMO FROM LINDA G. SYE, ACTING DIRECTOR OF ADMINISTRATION AND MANAGEMENT, AD-1

Reply to: AD-244

To: Heads of Departmental Elements

Subj: Protection of Electronic Records

This memorandum provides status information regarding a recent judicial ruling concerning the management of electronic records, and reminds Department of Energy (DOE) and DOE contractor organizations of their responsibilities in this area.

A recent order by a three-judge panel of the U.S. Court of Appeals for the District of Columbia partially overturned lower court rulings forbidding the White House from deleting computer data. The panel stated, in part:

"Defendants may remove, delete or alter such information as they see fit, so long as the information is preserved in identical form [emphasis added]... [However, backups of the information must] faithfully replicate all information removed, deleted or altered, including message logs, user directories and any other information contained in the original system."

The Government has filed a notice of its intent to appeal the order. To date the order's applicability to Federal agency recordkeeping has not been provided by the National Archives and Records Administration (NARA); implications of the decision could be far-reaching. For example, when dispositioning electronic mail which is deemed to be "record" material (as opposed to "non-record" electronic mail), it appears that the disposition option of converting electronic mail into hard copy, followed by deleting the electronic mail, would not satisfy the requirement to preserve the electronic records which were the subject of this case. Other questions remain with regards to the implications on Government-wide electronic records management.

Notwithstanding the appeals court decision, DOE maintains that its current records schedules are authoritative for the disposition (including destruction) of its records. Until and unless NARA issues clarifying guidance regarding this matter, and in view of the Government's stated intention to appeal, I believe it to be prudent to continue following current DOE policies and procedures for the maintenance and disposition of electronic records. I strongly suggest that you review and revalidate your current local procedures to ensure that the management of your electronic records is in compliance with DOE directives.

Please see attachment 1 for additional background and guidance regarding this important subject.

Should you have any questions regarding this matter, please consult your site Records Officer (RO), or the cognizant DOE Records Management Program Coordinator (RMPC) for the DOE Field Office. Local ROs should consult their RMPCs for any advice and assistance required, or if there is no RMPC, contact the Departmental Records Officer. RMPCs should consult the Departmental Records Officer on questions they might have. Questions concerning electronic security classified and sensitive materials should be directed to the appropriate Headquarters Security Officer or security representative; or, if unknown, contact the DOE Office of Security Affairs.

Linda G. Sye  
Acting Director, Office of  
Administration and Management

cc:

DOE Records Management  
Program Coordinators (RMPCs)  
Site Records Officers?  
IRM Points of Contact?  
PSO Points of Contact?  
Anybody else on our standard  
distribution list (if we have one)  
for this kind of stuff?

## ELECTRONIC RECORDS DISPOSITION

The current Department of Energy (DOE) records disposition program prescribes that all file stations in all offices must have a continually updated DOE F 1324.10, Records Inventory and Disposition Schedule (RIDS), which provides a description of the record and non-record documentation (regardless of storage medium) maintained at the file station(s). The RIDS, once approved as prescribed by DOE 1324.2A, Records Disposition, dated September 13, 1988, is authoritative for the disposition of records at a particular file station(s). Still, RIDS preparers and approving officials are required to take precautions to ensure that the RIDS are, in fact, accurate and authoritative before any records disposition action occurs (including deletion/destruction).

Currently existing DOE records schedules were promulgated in accordance with Federal law and National Archives and Records Administration (NARA) regulations. In normal circumstances a finite "series" of records (including electronic records) which is "covered" by an approved records schedule can be dispositioned (e.g., deleted, transferred to inactive storage, preserved as permanent, etc.) in accordance with the specific instructions in that schedule. Further, unscheduled records (including electronic records) cannot be dispositioned until the materials are properly inventoried and scheduled. Only documentary materials (including electronic data and information) deemed to be non-record materials (as defined in DOE directives and NARA regulations, and as listed in an approved DOE RIDS) can be dispositioned without NARA approval.

DOE 1324.6, Automated Office Electronic Recordkeeping, dated July 8, 1987, provides records management policy for electronic records which are associated with personal computers, word processors, and associated electronic office equipment. Inventorying and scheduling of automated office electronic records is required in accordance with DOE 1324.2A. General Records Schedule 20, published by NARA, is authoritative for the disposition of certain common computer records associated with main frame computers. Where DOE main frame computer records series are not found to be specifically described in General Records Schedule 20, they must be inventoried and scheduled in accordance with DOE's records disposition program.

[NOTE: NARA-approved records schedules are exclusively found in the following documents: (1) DOE 1324.2A, Records Disposition, dated September 13, 1988 (including Change 1 dated April 9, 1992); (2) the General Records Schedules (GRS) published by NARA; and (3) circulated but unpublished DOE-initiated Standard Forms 115, Request for Records Disposition Authorization, approved by NARA and on file in the office of the Departmental Records Officer, AD-244, at DOE Headquarters.]

The requirements of DOE 1324.2A and DOE 1324.6 are to be applied to the universe of contractors awarded a management and operating contract or another type of prime contract or subcontract, if they are performed, at least in part, on site at a DOE-owned or -leased facility. Additionally, they are applicable to contractors whose contracts contain a health and safety clause, unless by contract provision the Government does not have the right to assume custody or control of the records. For classified matter, these provisions apply to all covered contractors to the extent implemented under a contract or other agreement. A covered contractor is a seller of supplies or services involving access to classified information which is processed, handled, or stored in DOE or DOE contractor facilities.

Federal regulations require that all personnel be advised that the maximum criminal penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a \$2,000 fine, 3 years in prison, or both (36 Code of Federal Regulations, Subpart G).